

### **AMENDMENTS TO THE DRAWINGS**

The attached sheet of drawings includes changes to FIG. 3A. This sheet, which includes FIGS. 3A and 3B, replaces the original sheet including FIGS. 3A and 3B. By the attached replacement drawing, an accidental use of duplicate part numbers (314 for tip member distal end in FIG. 3A and the same number 314 for lumen in FIG. 3B) has been corrected. Tip member distal end in FIG. 3A is now numbered as part 313, while lumen in FIG. 3B remains numbered as part 314.

Attachment: One Replacement Sheet.

## REMARKS

1. In response to the Office Action mailed February 12, 2007, Applicants respectfully request reconsideration. Claims 1-28 were last presented for examination. In the outstanding Office Action all claims were rejected. By the foregoing Amendments, claims 1, 2, 5, 6, 8-17, 24, 25 and 28 have been amended, claims 7, 18, 19, 22, 23 and 27 have been cancelled, and claims 29-62 were added. Thus, upon entry of this paper, claims 1-6, 8-17, 20, 21, 24-26 and 28-62 will be pending in this application. Of these 56 claims, four (4) claims (claims 1, 24, 29 and 59) are independent.

2. Based on the above Amendments and following Remarks, Applicants respectfully request that the outstanding objections and rejections be reconsidered, and that they be withdrawn.

### *Claim Rejections under 35 U.S.C. § 102*

3. Independent claims 1, 23 and 24 and dependent claims 2, 3, 7, 8, 14-20, 22, 27 and 28, are rejected as being anticipated by U.S. Patent No. 6,119,044 to Kuzma ("Kuzma").

4. As presently amended, independent claims 1 and 24 recites, in part, "wherein said tip member is configured such that said tip member prevents substantial foldover of the tip toward said proximal end of said carrier member when a deflection/impact force is applied to said tip member during implantation into the cochlea." (*See*, claims 1 and 24, above.)

5. As noted in the Office Action, the "soft tip" 37 of Kuzma is depicted as being "circular". (*See*, Office Action, pg. 3, ¶11; Kuzma, figs. 1, 4 and 6.) Furthermore, the "soft tip" 37 is illustrated in various figures in Kuzma as being semi-circular. (*See*, e.g., Kuzma, figs. 1, 4 and 6.) No further description of the "soft tip" is disclosed in Kuzma other than the tip having a "depth" of approximately 0.3 mm. Kuzma does not depict or describe its "soft tip" as being "configured such that said tip member is not subject to substantial foldover of the tip toward said proximal end of said carrier member when a deflection/impact force is applied to said tip member during implantation into the cochlea" as recited in Applicants' claims 1 and 24.

6. Furthermore, while Kuzma describes its "soft tip" 37 as being formed from LSR-25, and while LSR-25 is described, in the Product Information Sheet attached to the Office Action, as being a "high strength, clear flexible elastomer" with a tensile strength of 700 psi,

elongation of 400% and tear strength of 80 ppi, it is unclear how having these properties alone would make Kuzma's tip member "configured such that said tip member prevents substantial foldover of the tip toward said proximal end of said carrier member when a deflection/impact force is applied to said tip member during implantation into the cochlea," as is recited in Applicants' independent claims 1 and 24. It is well understood that electrode carrier members typically include flexible materials of some sort, all having some degree of tensile strength, elasticity, tear strength, etc. Simply using LSR-25 or other similar material in the construction of an electrode carrier member does not automatically result in a carrier member having a tip that is resiliently flexible, as asserted by the examiner. Nor is there any teaching or suggestion that such a material will necessarily result in the tip of the Kuzma's electrode array having or demonstrating the features recited in Applicants' independent claims 1 and 24.

7. Applicants therefore respectfully submit that Kuzma neither discloses nor suggests a tip "configured such that said tip member is not subject to foldover toward said proximal end of said carrier member when a deflection/impact force is applied to said tip member during implantation into the cochlea," as recited by independent claims 1 and 24. Accordingly, Applicants' independent claims 1 and 24, as amended above, are patentably distinguishable over Kuzma. Therefore, Applicants respectfully request that the rejection of independent claims 1 and 24 under 35 U.S.C. 102(b) in view of Kuzma be reconsidered and withdrawn.

#### ***Dependent claims***

8. The dependent claims incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them independently patentable over the art of record. Accordingly, Applicants respectfully assert that the dependent claims are also allowable over the art of.

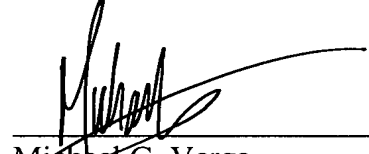
#### ***Conclusion***

9. In view of the foregoing, this application should be in condition for allowance. A notice to this effect is respectfully requested.

10. Applicants reserve the right to pursue any cancelled claims or other subject matter disclosed in this application in a continuation or divisional application, cancellations and amendments of above claims, therefore, are not to be construed as an admission regarding the

patentability of any claims and Applicants reserve the right to pursue such claims in a continuation or divisional application.

Respectfully submitted,



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